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STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

DOCKET NO. 97-153-E

POSTED  
4/15/97  
IN RE:

Blue Ridge Electric Cooperative, Inc., )  
 )  
Petitioner, )  
 )  
v. )  
 )  
Duke Power Company, )  
 )  
Respondent. )

S. C. PUBLIC SERVICE COMMISSION

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Emergency  
Petition for Rule to  
Show Cause and  
Petition for Immediate  
Cease and Desist  
Order

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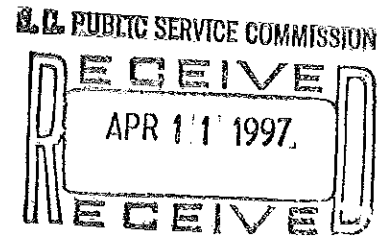
Blue Ridge Electric Cooperative, Inc. (Petitioner) respectfully petitions the South Carolina Public Service Commission (Commission) pursuant to the Commission's Rules of Practice and Procedure (Rules) and its authority under Title 58 of the South Carolina Code of Laws, as amended, to immediate issue a Rule to Show Cause Order herein. The Order would require Duke Power Company (Respondent) to show why the Commission should not direct Respondent both temporarily and permanently to cease and desist from providing any electric service and to dismantle its facilities to: (a) a new industrial premises with an anticipated maximum connected load of 335KW, which initially required service after July 1, 1969, which is located adjacent to South Carolina Highway 11, near the town of Walhalla, wholly within Petitioner's Commission-assigned territory, and a transmission line also located in Oconee

S. C. PUBLIC SERVICE COMMISSION

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Commission-assigned territory. See map attached as Exhibit A. The representative and customer address thereon is:

Mr. David Schmidt  
The Nason Company  
2810 Blue Ridge Blvd.  
West Union, South Carolina 29696



Petitioner also requests issuance of an immediate cease and desist Order. The Commission may, alternatively, consider this Petition as a Complaint under R.103-835 of the Commission's Rules and a Petition for Immediate Cease and Desist Order. The grounds, facts, relief sought, and relation information are set forth as follows:

1. Blue Ridge Electric Cooperative, Inc., is an "electric supplier", as defined in S.C. Code Ann. §58-27-610(1), duly providing electric service within the State of South Carolina. Its duly authorized representative herein and their address and phone numbers are:

Petitioner: Charles Dalton  
President and Chief Executive Officer  
Blue Ridge Electric Cooperative, Inc.  
P.O. Box 277  
Pickens, South Carolina 29671  
(864) 647-2005

Petitioner's Legal Counsel: Steven W. Hamm  
Richardson, Plowden, Carpenter &  
Robinson, P.A.  
Post Office Drawer 7788  
1600 Marion Street  
Columbia, South Carolina 29201  
(803) 771-4400

Petitioner requests that all Orders, pleadings, correspondence, and information related to the matters set forth herein be sent directly to its Legal Counsel identified above.

2. Duke Power Company is an "electric utility" and "electric supplier", as defined in S.C. Code Ann. §§58-27-10 and 58-27-610(1), respectively, doing business, in part, within the State of South Carolina. Its address for its Legal Department is:

Respondent: Duke Power Company  
Legal Department  
422 South Church Street  
Charlotte, NC 28242-0001

3. S.C. Code Ann. §58-27-140(1) sets forth certain powers of the Commission relevant herein. It states:

The Commission may, upon its own motion or upon complaint:

(1) Ascertain and fix just and reasonable standards, classifications, regulations, practices or service to be furnished, imposed, observed and followed by any or all electrical utilities...

This section, thus, provides the Commission with authority to regulate the electric service of Respondent furnished in South Carolina.

4. S.C. Code Ann. §58-27-610 et seq. provides for Commission assignment of certain electric service territory in South Carolina for an electric utility and an electric supplier. The tract(s) of land in question is wholly assigned to Petitioner and involves a new industrial premise "...initially requiring electric

service after July 1, 1969..." See attached Affidavits of C. Alan Blackmon and Barney Drake.

5. Under S.C. Code Ann. § 58-27-610 (4), "industrial premises"

means:

the premises of a person, firm or corporation engaged in the business of manufacture, processing, assembling, fabrication or related work.

Under S.C. Code Ann. §58-27-610(2), "premises" means:

the building, structure or facility to which electricity is being or is to be furnished;...

6. Under S.C. Code Ann. §58-27-610(3), "line" means:

any electric conductor operating at a nominal voltage level or 25KV or less, ... *provided*, the term "line" shall include any electric conductor operating at a nominal voltage level in excess of 25 KV and less than 48 KV where it is established to the satisfaction of the other electric suppliers in the county or counties where such conductor is located, or in the absence of such agreement, to the satisfaction of the Public Service Commission, that the primary purpose and use of such conductor is for the distribution of electric power and not for the transmission of bulk power from one area to another; ....

7. R. 103-304 of the Commission's regulations for electric utilities and suppliers like Respondent sets forth certain certificate and prior approval provisions for construction and extension of electric service. It states in part:

No electrical utility supplying electric service to the public shall hereafter begin the construction or operation of any electric facilities, or of any extension thereof, without first obtaining from the Commission a certificate that public convenience and necessity requires or will require such construction or operation; such certificate to be granted only after notice to other interested

electric systems and to the public, and after due hearing; provided, however, that this regulation shall not be construed to require any such electrical utility to secure a certificate for any extension within a municipality or district within which it has heretofore lawfully commenced operations, or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it and not receiving similar service from another electrical utility, but if any electric system in constructing or extending its lines, plant or system unreasonably interferes, or is about to unreasonably interfere, with the service of the system of any other electric system, the Commission may make such order and prescribe such terms and conditions in harmony with the regulation as are just and reasonable.

1. Rural Territorial Act. The Commission has assigned all areas outside municipal limits, and more than 300 feet from the lines (as defined in Section 58-27-610(3) of the South Carolina Code of Laws), as such lines existed on the dates of assignments, of any electric supplier (except some territory which was left unassigned to any supplier), and no electric supplier shall construct lines and equipment except as provided by S.C. Code of Laws, §§ 58-27-620(2); 58-27-620(4); 58-27-620(6); 58-27-650; and 58-27-660(1), into territory assigned to another supplier without prior approval of the Commission...

Respondent has already begun initial construction of electric service facilities, lines, and equipment to begin providing electric service over the objections of Petitioner. See Affidavit of Barney Drake. Respondent has not, however, sought any specific certificate for its construction and service to the industrial premises in question, nor has it received prior Commission approval under R. 103-304 for its construction and provision of service as required.

8. Respondent apparently contends that it may provide electric service to the industrial premises at issue, despite the facts that the new premises will have a maximum connected load less than 750 KW, is wholly within the territory assigned to Petitioner, and that it has no line within this area, under S.C. Code Ann. §§58-27-610(3), 58-27-620(2) through 58-27-620(4).

These subsections state in pertinent part:

58-27-610(3): any electric conductor operating at a nominal voltage level or 25 KV or less, ... *provided*, the term "line" shall include any electric conductor operating at a nominal voltage level in excess of 25 KV and less than 48 KV where it is established to the satisfaction of the other electric suppliers in the county or counties where such conductor is located, or in the absence of such agreement, to the satisfaction of the Public Service Commission, that the primary purpose and use of such conductor is for the distribution of electric power and not for the transmission of bulk power from one area to another; ....

58-27-620(2) Any electrical utility shall have the right to furnish electric service to any industrial premises initially requiring electric service after July 1, 1969, if requested in writing to provide such service and the connected load for initial full plant operation at such industrial premises is 750 kilowatts or larger,....

58-27-620(3) No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to service under this section if the premises were already constructed....

58-27-620(4) No electric supplier shall furnish electric service to any premises in the State outside the limits of any incorporated city or town except as permitted by this section;....

In taking the position that it may properly provide this electric service, Respondent overlooks that it only has the right under these subsections to be chosen by an industrial customer located wholly within the assigned service territory of Petitioner if its maximum connected load will be 750 KW or larger. Respondent further overlooks that it has no lines within this area of Petitioner's territory, and alternatively, if it is found that Respondent does have lines, that it may not assert corridor rights in territory wholly assigned to Petitioner. As set forth in the attached affidavit, the 44 KV transmission line Respondent asserts provides corridor rights to it allowing it to serve Nason was constructed on or about 1972 to tie the Duke system together, not to serve specific electric customers. The 44 KV transmission line serves only to transmit bulk power from Wallhalla to Westminster. See map at Exhibit A.

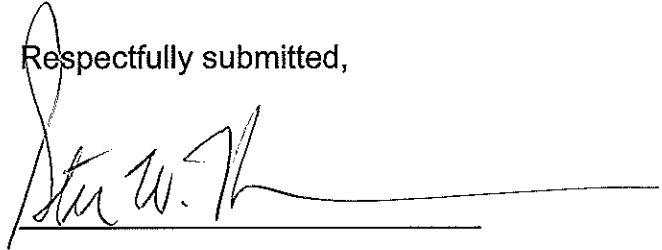
9. Petitioner has previously given notice to the new customer and to Respondent of its strenuous objections to the construction of facilities and provision of service by Respondent, to no avail. Construction and the provision of such illegal service continue to the detriment of Petitioner and its members. Affidavits of Barney Drake and C. Alan Blackmon.

10. Petitioner has attached a verification by Mr. Dalton herein.

**Wherefore**, Petitioner prays this Honorable Commission to: grant these Petitions, to issue its Rule to Show Cause Order; to issue an Order immediately requiring Respondent to cease and desist from any construction activity and/or

from providing such service and allowing Petitioner to provide service until such time as the Commission hears and rules on this matter; to provide an opportunity to be heard as soon as possible concerning the proposed cease and desist Order; to provide another opportunity to be heard on the merits herein; and to provide other appropriate relief so as to protect the interests of Petitioner.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Steven W. Hamm", is written over a horizontal line.

Steven W. Hamm  
Mary Sowell League  
Richardson, Plowden, Carpenter,  
and Robinson, P.A.  
Post Office Drawer 7788  
Columbia, South Carolina 29201  
(803)771-4400  
Counsel for Blue Ridge Electric  
Cooperative, Inc.

Columbia, South Carolina  
April 11, 1997



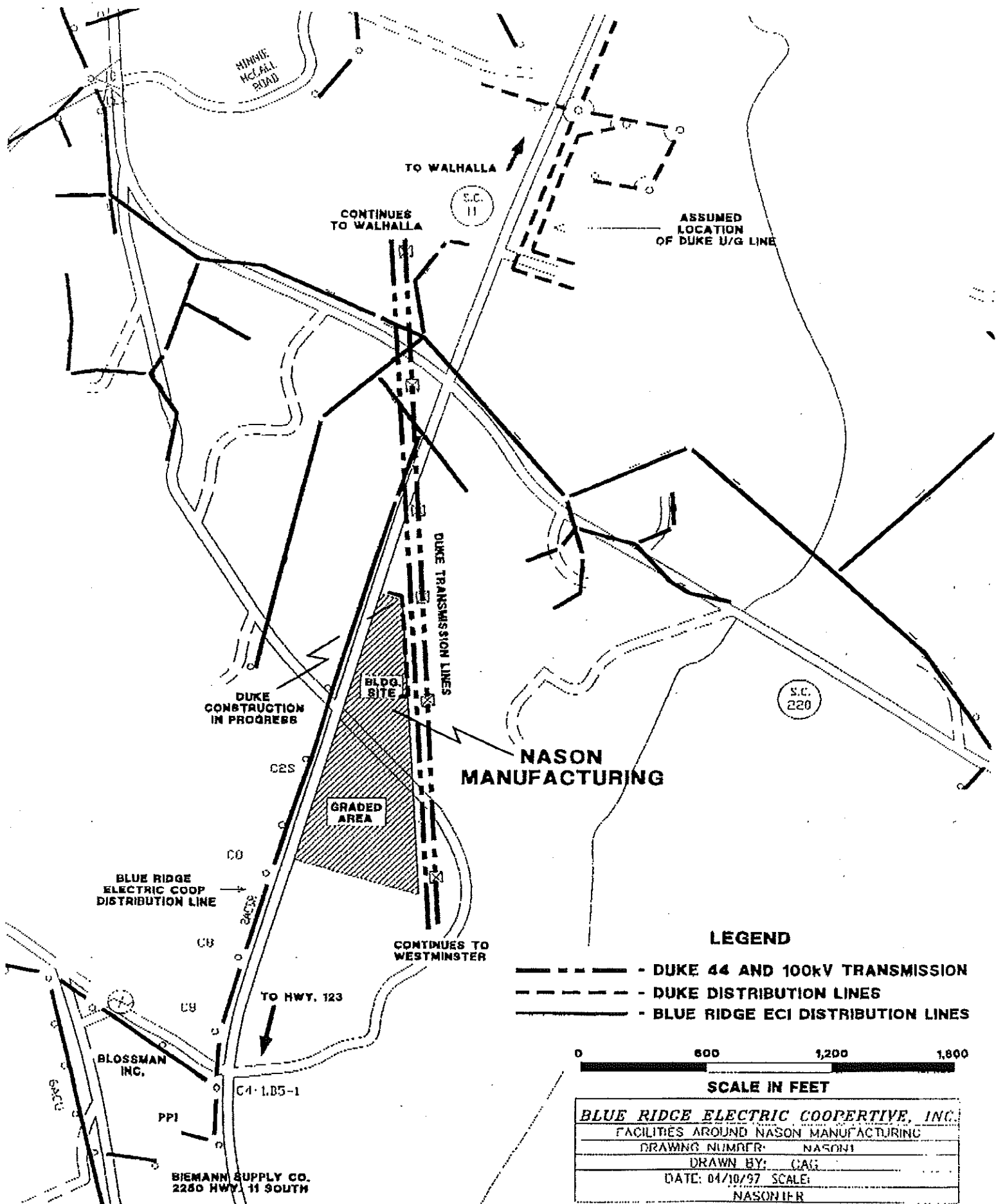


EXHIBIT A

STATE OF SOUTH CAROLINA  
BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

DOCKET NO. 97-\_\_\_\_\_-E

IN RE: Blue Ridge Electric Cooperative, Inc.	)	
	)	
Petitioner,	)	
	)	VERIFICATION
v.	)	
	)	
Duke Power Company,	)	
	)	
Respondent,	)	
_____	)	

I, Charles Dalton, having first been duly sworn, states as follows:

1. I have read the foregoing Petition for Rule to Show Cause and Petition for Immediate Cease and Desist Order with Affidavits and hereby verify that the representations therein are true to the best of my knowledge.

2. In order to provide the Commission with the factual information to support Petitioner's position, Affidavits from me have also been enclosed, as well as from others familiar with this situation.

Charles E Dalton  
Charles Dalton

SWORN to and subscribed  
before me this 10 day  
of April, 1997

Michelle Watson  
Notary Public for South Carolina

My Commission expires: 5-1-2000

**AFFIDAVIT OF  
C. ALAN BLACKMON**

1. I have served as Manager of Engineering for Blue Ridge Electric Cooperative, Inc. ("Blue Ridge") since March of 1985 and am familiar with the facts and events stated herein.
2. The Nason Company facility in Oconee County is a newly constructed facility situated fully within territory assigned to Blue Ridge under the terms of the Territorial Assignment Act of 1969.
3. Duke Power Company is installing underground lines and may be constructing overhead lines to provide initial electric service to the Nason plant, despite the fact that the plant is fully located within Blue Ridge assigned territory.
4. The maximum anticipated load for the Nason plant is less than 750 KW.
5. It is my understanding that Duke is attempting to provide service based on its claim that a 44 kv transmission line is located within 300 feet of the Nason facility. Duke can not claim corridor rights for the following reasons:
  - (A) The 44 kv line is a transmission rather than a distribution line.
  - (B) Even if the line in question were to be designated a "distribution" line, it would not be eligible for corridor rights because its character when it was originally constructed was that of a tie line, which does not enjoy corridor rights under the terms of the statute.
  - (C) Duke has indicated its intention to serve the Nason facility, not from this 44 kv transmission line, but through a line extension from its existing distribution facilities located a considerable distance from the Nason plant.
6. Blue Ridge has existing distribution lines immediately adjacent to the Nason plant site with sufficient capacity available to supply reliable electric service to the plant.

7. That Duke's unlawful construction and interference with customers of Blue Ridge have an adverse service and economic impact on Blue Ridge and serve as a detriment to the proper provision of electric service to Blue Ridge's members.

Further affiant sayeth not.

C. Alan Blackmon

C. Alan Blackmon  
Manager of Engineer

4-10- 1997.

SWORN to before me this  
10th day of April, 1997.

Michele G. Watson

Notary Public of South Carolina

My Commission Expires BY EXPIRATION DATE - 1998

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF OCONEE )  
\_\_\_\_\_ )

AFFIDAVIT OF  
BARNEY DRAKE

The undersigned, having first been duly sworn, does hereby depose and state as follow:

1. That he is the Senior Engineer for Blue Ridge Electric Cooperative, Inc. ("Blue Ridge"), has been employed in this capacity since February 1995, and as such is familiar with the events and facts stated herein.

2. That the Nason Company is constructing or having constructed a new industrial facility that is located adjacent to SC Highway 11, near the town of Walhalla, in Oconee County.

3. That this facility is wholly located and situated within territory assigned to Blue Ridge under the Territorial Assignment Act of 1969.

4. That according to Mr. David Schmidt of the Nason Company, the maximum anticipated connected load for initial plant operation is less than 750 KW.

5. That I have been in contact with and spoken to Mr. David Schmidt of Nason, and informed him that the facility was wholly located and situated within territory assigned to Blue Ridge, and that therefore Blue Ridge would be the supplier for electric service to this new industrial premise.

6. That Mr. Schmidt informed me that Duke Power Company (Duke) had advised him that it believed it had the right to serve the Nason facility based on corridor rights from a 44KV transmission line, and that Nason had signed a contract for electric service with Duke.

7. That he has spoken with Mr. Harold Robbins and Mr. Steve Goza of Duke, and was told by them that Duke believed it had the right to provide service to the Nason facility based on corridor rights from this 44KV line, as it considered this line a distribution line.

8. That he was informed by Mr. Steve Goza of Duke that Duke did not intend to tap the 44KV line to serve the Nason facility.


9. That Duke is in the process of installing an underground three-phase primary line to the Nason facility.

10. That Blue Ridge has distribution lines immediately adjacent to the Nason property with sufficient capacity to provide electrical service to this facility.

11. That Duke's unlawful construction and interference with customers of Blue Ridge have an adverse service and economic impact on Blue Ridge and serve as a detriment to the proper provision of electric service to Blue Ridge's members.

FURTHER AFFIANT SAYETH NOT.

April 10, 1997  
Pickens, South Carolina

  
Barney Drake  
Senior Engineer  
Blue Ridge Electric Cooperative, Inc.

AFFIDAVIT OF  
CHARLES DALTON

1. That he is President and Chief Executive Officer of Blue Ridge Electric Cooperative, Inc., (Blue Ridge), which provides electric service in South Carolina.

3. That neither Duke nor the new customer has requested Blue Ridge consent to this activity and any service, and Blue Ridge objects to it. In fact, a representative of Blue Ridge has made David Schmidt of the Nason Company, and Harold Robbins and Steve Goza of Duke aware of these objections. To date, neither Mr. Schmidt nor anyone else on behalf of the Nason Company has requested electric service from Blue Ridge, and in fact, Mr. Schmidt has stated that Nason has signed a contract with Duke for it to provide Nason electric service.

4. That this construction and service activity is detrimental to Blue Ridge and its members and also contributes to unnecessary duplication of electric

service facilities in Oconee County generally and in Blue Ridge PSC-assigned territory specifically.

5. That upon information and belief, the proposed Duke service to the new industrial premises at this site would be a violation of Blue Ridge's territorial rights under the Territorial Assignment Act and an unlawful interference with Blue Ridge's system.

6. That Blue Ridge intends to protect its rights to serve the premises at issue and respectfully requests the Public Service Commission allow it to do so and to grant the relief sought in Blue Ridge's Petition for Rule to Show Cause and Petition for Immediate Cease and Desist Order.

FURTHER AFFIANT SAYETH NOT.

Charles E Dalton  
Charles Dalton

SWORN to and subscribed  
before me this 10<sup>th</sup> day of  
April, 1997.

Michele L. Watson  
Notary Public for South Carolina

My Commission expires: SEPTEMBER 1, 2001



STATE OF SOUTH CAROLINA  
BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

DOCKET NO. 97- \_\_\_\_\_-E

IN RE: Blue Ridge Electric Cooperative, Inc., )

Petitioner, )

v. )

Duke Power Company, )

Respondent. )

**CERTIFICATE OF SERVICE**

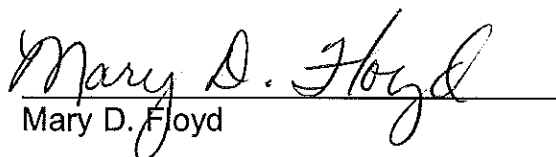
I, the undersigned, do hereby certify that I have served the foregoing Emergency Petition for Rule to Show Cause and Petition for Immediate Cease and Desist Order; Verification; and Affidavits of Charles Dalton, C. Alan Blackmon, and Barney Drake by placing a copy of the same in the United States mail, postage prepaid, addressed as indicated below:

David Schmidt  
The Nason Company  
2810 Blue Ridge Road  
West Union, South Carolina 29696

and by hand delivery as indicated below:

William F. Austin, Esquire  
Counsel for Duke Power Company  
Austin, Lewis & Rogers  
1022 Calhoun Street, Suite 301  
Columbia, South Carolina 29201

Columbia, South Carolina  
April 11, 1997

  
Mary D. Floyd